

# Understanding Guardianship

A Guide to Understanding  
Guardianship in the Northern Territory

## **Understanding guardianship: a guide for private guardians appointed under the Northern Territory *Guardianship of Adults Act 2016***

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You can download this guide for free from our website.

For a printed copy, please phone or email us. Or you can visit us in Darwin or Alice Springs where we have copies available.

### **Disclaimer**

This guide does not constitute or replace legal advice. The dynamic nature of adult guardianship means that provisions and regulations under the Guardianship of Adults Act and related Acts will change from time to time. If you use this guide, you must check that provisions and regulations relating to your situation remain current.

# Welcome

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Dear Guardian

Thank you for taking on this unique and rewarding role. I cannot overstate the importance of family and friends who are willing to be guardians.

This guide will help you:

- understand your role and responsibilities under the [Guardianship of Adults Act 2016](#)
- follow the guardianship order the [Northern Territory Civil and Administrative Tribunal \(NTCAT\)](#) has issued.

Being a guardian is sometimes challenging. You might feel pressured to take on more responsibility than you need to, and to act as a carer or case manager. Just keep in mind that your main role is to make good decisions for the person whose interests you represent in line with the guardianship order. In doing so, you can make a very real and positive contribution to that person's life.

As you take on your role as guardian, you have the support of the Office of the Public Guardian. We offer information, advocacy, education and support to:

- appointed adult guardians like you
- people who are thinking about applying for guardianship
- people with impaired decision-making capacity who are subject to a guardianship order.

Our office also investigates specific concerns as they arise.

We know a guide has limits as a 'one size fits all' approach, so we offer our support with any questions or concerns you have. Our main role is to give you information and help when you need it. You can also visit our website to learn more about guardianship.

The NTCAT manages applications for guardianship and guardianship orders in the Territory. It can help you with these matters.

We hope you will find your experience as a guardian both satisfying and fulfilling!



**Beth Walker**  
Public Guardian

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# At a glance

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## About guardianship

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### What is guardianship?

A guardian has legal authority to make personal or financial decisions for another person aged 18 years or more with impaired decision-making capacity. This adult is known as the 'represented person'.

Guardianship is a serious step. It removes the person's right to make certain decisions about their own life, and gives this responsibility to you, as their guardian.

It does this through a legal document called a guardianship order, which:

- sets out the matters you have authority for
- relates to the [Guardianship of Adults Act 2016](#) ('Guardianship Act')
- the [Northern Territory Civil and Administrative Tribunal \(NTCAT\)](#) issues.

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### What does it cover?

Guardianship can cover a range of matters. You might be responsible for:

- personal matters like health care, accommodation, day to day care and contact with others (see [section 2](#))
- financial matters like property, investments and gifts (see [section 3](#)).

Whatever your authority, you must always:

- comply with the guardianship order and any other NTCAT order
- comply with the Guardianship Act and consider the guardianship principles it contains
- ensure your decisions are in the person's best interests.

You also need to be aware of some legal considerations. We explain these in [section 4](#).

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### Who manages guardianship?

The NTCAT decides guardianship matters in the Northern Territory. This is where you apply to:

- get a guardianship order for a person
- have an existing order reassessed.

[Section 5](#) overviews the key steps in the guardianship process.

The Office of the Public Guardian can also help with any issues that arise during your time as guardian. Please contact us for support if you need it. Our details are on the next page.

## Key contacts

If you need any help as a guardian, please contact the Office of the Public Guardian. The NTCAT can tell you about tribunal procedures. You can also ask a lawyer for advice at your own cost.

### Office of the Public Guardian

Office hours are 8 am to 4 pm on Monday to Friday



1800 810 979



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### Darwin office



Darwin Corporate Park  
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### Alice Springs office



Jalistan House  
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### Northern Territory Civil and Administrative Tribunal (NTCAT)

Office hours are 8.45 am to 4 pm on Monday to Friday



1800 604 622



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[www.ntcat.nt.gov.au](http://www.ntcat.nt.gov.au)

### Darwin office



The Met Building  
CASCOS Building 5, Casuarina Village  
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Darwin NT 0830

**Alice Springs office**

Ground Floor Centerpoint Building  
Corner of Gregory Terrace and Hartley Street  
Alice Springs NT 0870

# 1 Your role as guardian

This section will help you:

1. know what you can and can't do as a guardian
2. understand the guardianship principles that should govern your decisions
3. work with other guardians, if the person you represent has more than one guardian.

## 1.1 Knowing what you can and can't do

### You can make decisions about some personal or financial matters

#### See also

[Section 2](#) for health care, accommodation, day to day care and relationship decisions

[Section 3](#) for financial matters

[Section 4](#) for legal issues

As guardian, you have legal authority under a guardianship order to make decisions about some personal or financial matters for the person you represent.

Personal matters might include:

- health care
- accommodation
- relationships with other people, including who can visit the person
- care and support arrangements
- employment
- education and training
- day-to-day living matters, such as, daily activities and facilitating access to support services
- related legal matters.

Financial matters might include:

- receiving and paying money
- banking
- property (including real estate ownership)
- investment and asset management
- personal or property insurance
- trade or business operations
- related legal matters.

### The guardianship order will set out your responsibilities

#### Top tip

Take a copy of the guardianship order to meetings where you are representing the person, such as medical and banking appointments

The guardianship order will clearly state:

- which matters you must look after
- how far your authority extends, including when and how you can make decisions.

You are authorised to do anything the guardianship order allows. These will be things the represented person could lawfully do when they had full decision-making capacity.

You also have a right to access information you need to use your authority and make decisions. This includes the person's own information.

If you ask someone for access to information you need but they refuse without giving you a reasonable excuse, you can apply to the [Northern Territory Civil and Administrative Tribunal \(NTCAT\)](#) for an order that they give you that information.





Any information you ask for or get as a guardian must relate to your authority. You must not get, use or disclose it for any other purpose.

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### You must know your legal obligations

#### See also

[1.2](#) on the guardianship principles  
[1.3](#) on working with other guardians  
[4.3](#) on enduring powers of attorney

As a guardian, you must make decisions you have authority for when they are needed. You must also act as an advocate for the person in these matters. This means you may sometimes need to argue strongly for things to happen for the person.

You may need to sign some documents for them, such as health consent forms and privacy disclosures.

You must also:

- comply with the guardianship order and any other order the NTCAT has made
- comply with the Guardianship Act and its guardianship principles
- act honestly and with care, skill and diligence at all times
- cooperate with anyone else who has decision-making authority for the person.

A person with decision-making authority might be:

- another guardian
  - a decision-maker in line with the [Advance Personal Planning Act 2013](#) (see Part 1, section 3 'Definitions' and Part 3 'Decision makers')
  - someone with an enduring power of attorney.
- 

### Some actions are outside your authority

#### See also

[2.1](#) or section 8 of the [Guardianship Act](#) on restricted health care decisions

You are not authorised to, and must not vote for the represented person in a federal, state, territory or local government election or referendum.

You must not make a decision, or give effect to one, about:

- the care and wellbeing of the person's children
- the adoption of one of the person's children
- the person marrying or divorcing
- the person entering into or ending a de facto or sexual relationship.

You also must not make, vary or revoke:

- the person's will
- a power of attorney relating to them
- their advanced personal plan or any document with similar effect in another jurisdiction.

Finally, you must not:

- exercise the person's rights as an accused person relating to criminal investigations or criminal proceedings, including assessments and proceedings under part 10 of the [Mental Health and Related Services Act 1998](#)
- make a decision about or consent to health care that is 'restricted'.

Additionally you may not have authority under other legislation, for example under the [Mental Health and Related Services Act 1998](#) a guardian does not

have authority to make a decision about or consent to involuntary admission or involuntary treatment of a represented person.

If you have any questions about this, please contact us at the Office of the Public Guardian.

## 1.2 Understanding the guardianship principles

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### Two key principles should govern your decisions

The guardianship principles give a framework for decision-making. Two principles should inform all your decisions.

#### “ Every decision must be in the best interests of the person ”

This means that you have:

- done your best to know the person's current views or wishes about a matter you have authority for
- weighed all considerations you believe reasonably apply, to make the best decision for them.

#### “ Every decision maximises the person's participation in decision-making and everyday life ”

This means that you have done your best to ensure:

- you have given the person as much support as possible to make their own decisions
- your decisions do not unreasonably restrict their freedom of decision and action.



Apply these two key principles every time you act or make a decision for the represented person.

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### You must consider the person's lifestyle and protection

#### See also

Section 4 of the [Guardianship Act](#) for a detailed list of these principles

When making your decisions, consider factors like:

#### Lifestyle and independence

- The person's current and previously stated views and wishes
- Their lifestyle preferences and needs
- Their ability to maintain their independence and freedom of choice as much as possible
- Their emotional, physical, social and intellectual potential
- Their ability to live in and be part of the general community, with a support network
- Their overall happiness and wellbeing
- The views and wishes of an 'interested person'

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#### Dignity and protection from harm

- The person has appropriate care, including health care and personal care
- They are protected from harm, neglect, abuse and exploitation
- They are treated with dignity and respect

- You keep information about them confidential and private
- You protect their property and assets from loss, misuse or damage

## 1.3 Working with other guardians

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### A person might have more than one guardian

The NTCAT can appoint more than one guardian to a person under a guardianship order.

It will do this jointly, severally, or jointly and severally. This affects how the guardians must make decisions.

#### Jointly

All guardians must agree and make decisions together.

If you cannot agree, you can seek an order from the NTCAT for the matter.

#### Severally

Guardians have separate decision-making responsibility for different matters.

#### Jointly and severally

Guardians can use their decision-making authority together or on their own, but they should:

- be confident in the other guardians' ability to make decisions
- trust a guardian will always act in the person's best interests



To meet your obligations as a guardian under the Guardianship Act, always work with other guardians and make decisions you all agree on.

If you are unable to reach agreement you can apply to the NTCAT

### You could be appointed jointly with the Public Guardian

#### See also

[5.4](#) on what the Public Guardian does

Adult guardianship officers work in the Office of the Public Guardian.

These officers:

- are delegates of the Public Guardian and make decisions on behalf of the Public Guardian when appointed as guardian
- have the same responsibilities as private guardians

If you are a joint guardian with the Public Guardian, an officer will contact you to discuss how you can work together for the person you jointly represent.

## 2 Personal matters

This section looks at some of the personal matters you may have authority for. We explain how you can:

1. make good health care decisions and avoid 'restricted' matters
2. choose safe, suitable accommodation that minimises risk of injury and harm
3. manage contact with others effectively.

### 2.1 Making health care decisions

#### Plan and monitor the person's care

##### See also

Our '[Who to tell](#)' checklist at the end of this guide

##### Top tip

To understand and monitor the person's health care needs, organise a medical and dental examination at least once a year

The guardianship order may say you are responsible for health care matters. If so, you must be aware of any health conditions the represented person has that are known or need investigation. And make sure they get appropriate health care when they need it.

You must:

- ensure the person has a doctor (a GP)
- tell the doctor you will be involved in the person's care as a guardian, and speak with them when needed (at least once a year)
- ensure the person can access other health and medical professionals when needed (such as specialists, dentists, allied health therapists, gerontologists, podiatrists, nutritionists and psychologists)
- monitor the person's care and ongoing needs.

You may be involved in directly providing for the person's care. This will depend on your relationship with them, their supports and the decisions to be made.





Tell family members and others involved in the person's care about your role as guardian. Let them know they need to contact you for consent about health care matters.

#### Health care covers a range of decisions

Guardians with authority for health care can make a wide range of decisions.

The [Guardianship Act](#) defines 'health care' very broadly. It means health care of any kind, including:

 anything that is part of a health service, as defined in section 5 of the [Health Practitioner Regulation National Law](#) 

With health care authority, you can usually agree 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 while the order is in place.

**i See also**

4.2 on advance personal plans

You cannot consent to a health care action if:

- it relates to an advance consent decision in an advance personal plan
- it is 'restricted' health care, which we explain below
- you do not have authority under the guardianship order for health care decisions.

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**Some health care is restricted**

**i See also**

Section 8 of the [Guardianship Act](#) (restricted health care decisions).

Section 4 of the [Transplantation and Anatomy Act 1979](#) (non-regenerative tissue)

Guardians cannot consent to 'restricted' health care. This is where the proposed action or intervention is considered sensitive.

This includes:

- 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
- any other health care that the regulations restricts.

If the person requires such an action, you will need to apply to the Northern Territory Civil and Administrative Tribunal (NTCAT) ([Form AG8](#)). Only the NTCAT can make these consent decisions.



If you aren't sure if an action is restricted, contact the Office of the Public Guardian for help.

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**Ask care providers for information**

If you have authority for health care, you have the right to all information relevant to a decision that will help you act in the person's best interests.

Ask each health care provider questions so you understand the type of treatment proposed and its likely effects.

You might ask, for example:

- What is the medical condition?
- What does the treatment involve?
- What are the benefits?
- Are there any risks?
- What will happen if the person doesn't have the treatment?
- What will it cost and will there be out-of-pocket expenses?
- Is an alternative treatment available?

If you don't go to appointments with the person, it is important you still speak with the health care provider.

If you're not sure what decision to make or if the recommended treatment is in the person's best interests, ask for a second opinion from another doctor or health care provider.

## 2.2 Making accommodation decisions

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### You must help the person live safely in the community

If the guardianship order says you have authority for accommodation decisions, you can make decisions about where the person lives, and who they live with. These might be either permanent or temporary arrangements.

People with impaired decision-making capacity have the right to live in safe, appropriate and affordable housing in the community. They should have:

- freedom of movement and choice, where possible, about where they live
- access to the same range of activities and services as the community.

However, sometimes the person might want something that is not in their best interests. You might need to make difficult decisions to balance their wishes with keeping them safe and well.

It is important you look for the option that will least restrict their freedom of decision and action, and also be in their best interests.

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### Ask yourself these questions

These questions may help you make accommodation decisions.

#### Freedom of choice

- Has the person said they would prefer a certain type of accommodation or facility?
- Can they choose who they live or share facilities with?

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#### Options

- What options are available?
- What is the quality on offer and does it compare with the person's budget or available funds? Is there a fair match?

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#### Needs

- How much does the accommodation allow for and respond to the person's individual needs and interests?
- Does it support their human rights?
- Will it place any unnecessary restrictions on them?
- Is the physical layout suitable for their needs?
- Is there scope for privacy?
- What possessions can they keep? How will these be managed and cared for?

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#### Community

- Is the accommodation near family, friends, community services and facilities?
- Does it promote and foster personal relationships?
- Will it help them be independent and take part in the community?
- Does it offer regular activities or outings?

**Your decisions should minimise risk of injury**

Your accommodation decisions should also weigh up the risk of injury to the person you represent.

Sometimes people interested in a person's wellbeing see an unacceptable level of risk in the person staying in their family home. This might be because of:

- the home's physical conditions
- the person's frailty
- the possibility they will be at risk in the community
- their vulnerability to the behaviour of others.

You need to consider both the level of risk and whether the risk is real. If it is low and the person says they would like to stay at home, it may be appropriate to 'buy in' support services rather than force them to move.

**You must report violence or abuse**

Equally, you must be alert to the risk of violence or abuse.

All people with a disability have the right to feel and be safe. But you may come across a situation where someone alleges the person has suffered violence or abuse, or is at risk of harm, from another person. This might be in the family home, supported accommodation or elsewhere.

If you reasonably believe that someone has been violent or abusive, you may need to report this to the police by law.

Contact the Office of the Public Guardian or the police for help if you ever suspect violence or abuse.

Remember that every decision you make as a guardian must be in the person's best interests.

## 2.3 Day to day care

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**Day to day care includes support services, NDIS and decisions about other daily care needs**

If the guardianship order says you have authority for day to day care decisions, you can make decisions about the support services the person receives and work with National Disability Insurance Scheme to ensure the person has an appropriate NDIS plan.

Examples of day to day care,

- Facilitating access to support services – this can include decisions about which agencies to engage and what services the preferred agency is to provide to support the person in their day to day life eg.
  - Aged Care Services in the home and community
  - Disability Support Services
  - Agencies providing transport to assist the person to attend appointments,
  - Holiday programs etc

- Participate in NDIS planning and review meetings and contribute information to assist the NDIS assessment of the persons needs
- Arranging transportation for the person to attend appointments

However, sometimes the person might want something that is not in their best interests. You might need to make difficult decisions to balance their wishes with keeping them safe and well.

#### Ask yourself these questions

These questions may help you make decisions about day to day care.

<b>Freedom of choice</b>	<ul style="list-style-type: none"> <li>• Has the person said they would prefer a certain type of service or provider?</li> <li>• Can they choose who provides their services?</li> </ul>
<b>Options</b>	<ul style="list-style-type: none"> <li>• What options are available?</li> <li>• What is the quality of the services on offer and do they compare with the person's budget or available funds? Is there a good match between the quality of the service and the person's available funds?</li> </ul>
<b>Needs</b>	<ul style="list-style-type: none"> <li>• How well does the service respond to the person's individual needs and interests?</li> <li>• Does it support their human rights?</li> <li>• Will it place any unnecessary restrictions on them?</li> </ul>
<b>Community</b>	<ul style="list-style-type: none"> <li>• Does it promote and foster personal relationships?</li> <li>• Will it help them be independent and take part in the community?</li> </ul>

## 2.4 Managing relationships and contact with others

#### Contact with others includes visits, phone calls and social media

As a guardian, you are not authorised to make a decision about the person either:

- marrying or divorcing
- starting or ending a de facto or sexual relationship.

If the guardianship order gives you authority for the person's relationships with other people, this is about who the person has contact with.

It covers contact in person, in writing, by phone and through social media. Your role may include deciding where, when and how contact will happen.

You need to recognise the value of the person's existing relationships and networks, such as family, friends, service providers, community groups, legal advisers and other decision-makers the person appointed when they had decision-making capacity.



## **You must work with other decision-makers**

### **See also**

[1.3](#) on working with other guardians

You must cooperate with anyone who is an agent for the person, including other guardians, so everyone can use their authority properly.

If you cannot agree with someone who has an interest in a guardianship matter you have authority for, please contact the Office of the Public Guardian for help.

You can also apply directly to the NTCAT for an order to determine the decision for you. Please fill in an 'Ordinary Application' ([Form AG7](#)) from the NTCAT website.

## 3 Financial matters

This section will help you if you have authority for financial matters. It covers:

1. dealing with finances and property
2. giving gifts and supporting dependants
3. keeping clear financial records, including of your expenses.

### 3.1 Dealing with finances and property

#### Financial authority covers various activities

If you have authority for financial matters, you will need to make decisions about the person's property and financial affairs. The guardianship order will say exactly what your authority covers.

#### ★ Top tip

Keep the person's financial records up to date so they are ready for the NTCAT to review when needed

Financial matters can cover:

- receiving and paying money
- banking
- managing property (including real estate) the person owns
- investing and managing assets
- carrying on a trade or business
- arranging insurance for the person or their property
- managing legal matters relating to a financial matter, apart from those mentioned in section 24(e) of the [Guardianship Act](#).

#### i See also

Section 3 'Definitions' in the [Guardianship Act](#)

If you have this authority, you can do anything for the person that they could do lawfully if they had full legal capacity. However, you must always act in line with the Guardianship Act and guardianship order.



Tell family members and others involved in the person's care about your role as guardian. Let them know they need to contact you for consent about financial matters.

#### Dealing with property requires care, skill and planning

You may need to prepare an asset management plan and manage the person's property in line with that plan.

To do this, please download [Form AG9](#) from the Northern Territory Civil and Administrative Tribunal (NTCAT) website. For help filling it in, contact the Office of the Public Guardian.

You must deal with the person's property as if you hold it in trust for them, so you have the same duties, obligations and limits as a trustee.

This means you must act only in the person's interests and avoid conflicts of interest. You must use the skill and prudence that any reasonable and careful person would use in managing their own financial affairs.

## 3.2 Giving gifts and supporting dependants

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### Gifts must be reasonable

Having authority for financial matters means you can sometimes give a gift from the person's funds, as long as:

- the gift is like one the person made when they had decision-making capacity or might reasonably be expected to make
- its value is reasonable in the circumstances.

However, the NTCAT may restrict your authority to give or authorise gifts. If it does, it will include the details in the guardianship order or a separate NTCAT order.

You can only give the person's property to yourself if the NTCAT agrees to this in writing through an order.

### Your decisions can benefit others, including dependants

Similar to gifts, you can use your financial authority to benefit someone else, such as a dependant of the person, if:

- the benefit is like one the person made when they had decision-making capacity or might reasonably be expected to make
- its value is reasonable in the circumstances
- it does not negatively affect the person in a significant way.

For example, you might decide it is reasonable to pay educational expenses for the person's children, even though this has no direct benefit to the person and reduces their funds.

The NTCAT may restrict or expand your authority to provide for dependants. If it does, it will detail this in the guardianship order or a separate NTCAT order.

## 3.3 Keeping records

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### Complete and current records are vital



#### See also

Our '[Record keeping](#)' checklist at the end of this guide



**Top tip**  
Stay up to date with the regulations in case their requirements change

You must keep reasonable records and comply with any record-keeping and reporting requirements in the Guardianship of Adults Regulations.

The regulations require complete and up-to-date records of the person's assets and liabilities with enough information to identify each one. For each asset and liability, you must also record:

- all dealings and transactions with it
- its condition and management.

Under the regulations, you must record any other information reasonably necessary to show that decisions about the person's financial matters align with the Guardianship Act.

When the NTCAT reassesses the guardianship order, you must also complete a financial statement, which is [Form AG10](#) on its website. The statement details the person's 'income' (what they earned) and your 'expenditure' (what you spent on their behalf), from the date of your appointment or re-appointment as guardian to the date on the report.

You only need to keep records about the represented person's money and financial affairs, not money of your own that you spend on them unless you expect to be repaid.

The Office of the Public Guardian can help you work out what records are reasonable and tell you about any relevant regulations.

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**You will be reimbursed for related, approved expenses**

You should also record any expenses you have as a guardian.

You are entitled for the person you represent to repay your expenses, as long as:

- they directly relate to your role and authority as a guardian
- the NTCAT has approved them in the guardianship order or a separate order.

You may be repaid for:

- a particular expense
- expenses up to a specified amount
- expenses generally or otherwise as the NTCAT considers appropriate.

If you provide other services to the person (for example, as a carer or home helper), you are only entitled to payment or reimbursement for the other services if the NTCAT has approved it.

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**You may be asked to provide bank statements to NTCAT**

As you may be required to provide bank statements to NTCAT, it is suggested the person you are guardian for has a separate bank account to other persons including the financial manager. This is to assist with identifying income and expenditure that relates to the person when you submit the financial statement to the NTCAT. Having separate bank accounts means you won't be supplying another person's private details to the NTCAT

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**Tips to manage money**

- Ensure the banks and relevant financial institutions have been provided with a copy of the order and have been provided with your postal and/or email address for statements.
- When spending money, use direct debit or ATM card. This makes it easier to identify expenses from the bank statements.
- If you are using cash, make sure you ask for a receipt so you remember what was purchased.
- If you do use cash, write down in a book where the cash was spent.
- Ask the bank to send bank statements every month.
- Go through the bank statements every month and keep a record of income (money coming in) and expenditure (money going out).

## 4 Legal issues

In this section, we discuss some key legal matters, such as:

1. understanding your duty of care to the person you represent, including your privacy obligations
2. following an advance personal plan, so you know when you can and can't make a decision
3. managing any enduring powers of attorney that still apply.

### 4.1 Understanding your duty of care

**You must act carefully and in the person's best interests**

 **See also**

Part 6 of the  
[Guardianship Act](#)

It is important you are aware of your legal responsibilities as a guardian.

Above all, you owe a duty of care to the person you represent. This means you have a legal duty to:

- act carefully and in their best interests
- comply with the Guardianship Act.

You are unlikely to be held liable for a decision you make as a guardian if it is reasonable and made in good faith.

But if you act negligently or illegally, you can be liable for your actions.

If someone claims you have acted negligently, they need to show:

- you did not use your authority properly, exceeded it or were reckless in using it
- the represented person was harmed and that harm could reasonably have been foreseen
- your decisions were not in the person's best interests or gave others benefits that could not be reasonably justified
- you knowingly breached the person's privacy and confidentiality (which we talk about below).



Everyday living may bring risks for people with impaired decision-making capacity. If you're not sure what to do, speak to the Office of the Public Guardian, or get your own legal advice.

**Privacy and confidentiality are important**

You also have a duty to protect the person's privacy and confidentiality.

Any information you seek or get about them must relate to decisions the guardianship order allows. Keep this information in a safe, secure place.

Only discuss the person's personal details with people who are involved directly in either:

- providing a service to them, or
- protecting their best interests.

## 4.2 Following an advance personal plan

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**An advance personal plan records the person's choices**

 **See also**

[4.3](#) on enduring power of attorney

An advance personal plan is a legal document that sets out a person's future health, financial and life choices in case they lose their decision-making capacity. It is also known as a 'living will'. An advance personal plan can only be completed when a person has decision making capacity.

A plan only takes effect when the person loses decision-making capacity. It stops if the person cancels (revokes) it, recovers their decision-making capacity, or dies. It does not replace a will.

A plan can have all or some of the following:

**Advance consent decisions**

These allow persons to control the extent and type of their future medical treatment, if they cannot make a decision for themselves.

Advance consent decisions are legally binding, which means that doctors, guardians and other decision-makers must follow them.

---

**Advance care statements**

These set out a person's personal views, wishes and beliefs as the basis for how they want someone to act in making decisions for them in the future.

Unlike an advance consent decision, a statement does not tell decision-makers what actions to take, but it gives general guidance. What the person includes is up to them.

However, like advance consent decisions, if the person has decision-making capacity and is able to do so, they can:

- instruct their guardian or other decision-makers not to action the statement
- withdraw or amend their statement at any time.

---

**Substitute decision-maker**

This is someone (aged 18 or over) who can make decisions on a person's behalf when they can no longer do so. It might be a partner, parent, adult child, close relative, friend or other trusted person.

The person can appoint different decision-makers for different decisions in their advance care statement, or joint decision-makers who may need to work together.

Advance personal planning replaces enduring power of attorney in the Northern Territory. We explain enduring power of attorney in [4.3](#).

---

**You must follow the advance personal plan**

If the person you represent has an advance personal plan, you must cooperate with any decision-makers the plan appoints so they can use their authority.

### ★ Top tip

Ask the person's doctor if there is an advance personal plan on file

If the person has given consent for a health care action through an advance consent decision in their plan, you cannot make a consent decision for that action.

If the plan includes an advance care statement, you must use your authority to give effect to the statement, even if it is not in the person's best interests.

The only situations where you do not have to give effect to a statement are:

- if the person has decision-making capacity and tells you they don't want the statement to be given effect
- detailed in the [Advance Personal Planning Act 2013](#), sections 22 and 23.

## 4.3 Managing an enduring power of attorney

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### Enduring powers of attorney may still apply

Advance personal planning replaces enduring power of attorney.

This means an enduring power of attorney can no longer be created in the Northern Territory. But existing enduring powers are still valid, as are interstate powers.

So an enduring power of attorney may be relevant to the represented person if:

- they created it before the [Advance Personal Planning Act](#) started (on 17 March 2014) and they meet certain criteria
- an interstate enduring power of attorney has been recognised under the [Powers of Attorney Act 1980](#).

### The NTCAT will recognise existing powers in the guardianship order

The [Northern Territory Civil and Administrative Tribunal \(NTCAT\)](#) will consider an enduring power of attorney when creating the guardianship order.

It cannot give decision-making power to a guardian for a matter that an enduring power of attorney already covers.



As a guardian, you must cooperate with anyone who holds an enduring power of attorney so they can exercise their authority properly.

## 5 The guardianship process

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The section explains the guardianship process and answers some common questions. It looks at how you can:

1. become a guardian by applying to the [Northern Territory Civil and Administrative Tribunal \(NTCAT\)](#)
2. manage issues or changes, once you are appointed
3. have a guardianship order reassessed
4. understand the role of the Public Guardian and our office.

### 5.1 Becoming a guardian

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#### Apply to the NTCAT

The NTCAT appoints all guardians.

If you want to be a guardian for a person with impaired decision-making capacity, you need to apply to the NTCAT:

- 1 You can obtain an application form at [www.ntcat.nt.gov.au](http://www.ntcat.nt.gov.au)
- 2 Download the form 'Application for a Guardianship Order' ([Form AG1](#)).
- 3 Fill in the form and gather any evidence you need.
- 4 Submit your completed form to the NTCAT by email, fax, post or in person.

There is no fee for making an application.

---

#### Come to the application hearing

The NTCAT will arrange a hearing and let you know by letter or email when it will be held and where it will be located. This hearing will consider your application for guardianship.

The Office of the Public Guardian takes an interest in guardianship applications, so we might contact you to ask you some questions before the hearing happens.

You then need to come to the hearing. You might need to help the person the application is for to get there too. If needed, you can ask to take part by phone or video instead. If you or the person need an interpreter, you will need to make your own arrangements. You can contact the Office of the Public Guardian for assistance.

At a NTCAT hearing, you can choose to:

- appear for yourself
- have a lawyer
- be represented by someone else, with the NTCAT's approval.

This is covered in section 130 of the [Northern Territory Civil and Administrative Tribunal Act 2014](#).

You are responsible for any legal costs for yourself.



### Make sure you read and understand the guardianship order

If the NTCAT is satisfied the person requires a guardian, the NTCAT will issue a guardianship order and give a copy to any guardians.

When you receive your copy, you should read it carefully and make sure you understand it.

It is very important you understand what you can and cannot do. If you have any questions, please contact the Office of the Public Guardian for help.

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### Tell others about your authority

#### See also

Our '[Who to tell](#)' checklist at the end of this guide

#### Top tip

Use your postal address for bills or letters that relate to matters you are responsible for so they are not lost

You will need to let the right people know about your role as guardian so they can contact you if they need to.

Who to tell will depend on the type and extent of your authority.

You might need to contact:

- housing or accommodation providers
- utilities that commonly send bills (such as power, water and phone providers)
- banks, credit card providers and other financial institutions
- health and medical providers (such as hospitals, GPs, specialists and physiotherapists).

All guardianship orders reflect the particular needs and circumstances of the represented person, so the conditions in your order will likely be different from those for someone else you may know.

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### Register interstate orders with the NTCAT

If an interstate guardianship order is already in place, the NTCAT can register it in the Northern Territory.

Orders must be registered in the state or territory where the matters they cover are being dealt with.

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## 5.2 Reporting issues or changed circumstances

### Raise concerns about other guardians

#### See also

Our '[Resolving complaints and concerns](#)' fact sheet

If you are concerned about the behaviour or actions of another guardian, you can talk to the Office of the Public Guardian. If you need to you can make a formal complaint.

You can also apply to the NTCAT for a reassessment of the guardianship order. Please download [Form AG5](#) from the NTCAT website.

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### Contact the NTCAT if the person is not following your decisions

If the person you represent is not following your decisions, you can apply to the NTCAT for orders to help you.

The NTCAT will consider the person's best interests and whether any orders it makes are the best way to protect them from harm, neglect, abuse or exploitation.

<b>Keep your contact details up to date</b>	You must tell the OPG and the NTCAT if details for you or the person you represent change, such as postal address, email address or phone number. It is essential the OPG and the NTCAT has your up-to-date details so they can tell you about any matters for the person, including reassessment dates.
<b>Tell our office if you need to resign or take time off</b>	<p>If you cannot continue as a guardian, you can resign by giving notice in writing to the OPG and the NTCAT.</p> <p>If you need to take a short absence due to poor health or another reason, you must first let the Office of the Public Guardian know so we can make arrangements for the person.</p> <p>If you are the person's sole guardian, the Public Guardian will act in your place until you return. But it is important that you tell us as soon as you can take up your role again.</p>
<b>Report any deaths</b>	<p>If the represented person or another guardian for the person dies, you must tell the Office of the Public Guardian and NTCAT as soon as possible.</p> <p>If the person dies, both the guardianship order and your authority as guardian ends.</p> <p>If a guardian dies and other guardians are appointed jointly for a matter, the remaining guardians will have authority for that matter.</p>

### 5.3 Reassessing a guardianship order

<b>Be aware of the reassessment date</b>	<p>Reassessments are important as they help the NTCAT to:</p> <ul style="list-style-type: none"> <li>• review the status of the represented person's decision-making capacity</li> <li>• decide if any changes are needed.</li> </ul> <p>Changes might affect the terms of the guardianship order or the people appointed as guardians. Ideally, the person will be at the reassessment.</p> <p>The guardianship order will state when the order is due for reassessment and the NTCAT will send a notification to you beforehand to:</p> <ul style="list-style-type: none"> <li>• advise you of the date, time and location</li> <li>• tell you about the information you need to give to the NTCAT before the reassessment hearing, which we outline below.</li> </ul>
<b>Apply for a reassessment if you need one</b>	<p>If you do not want to wait for the specified reassessment date, you (or any other interested person, including the person) can also ask the NTCAT to reassess the guardianship order at any time.</p> <p>To apply:</p> <ol style="list-style-type: none"> <li>1. Go to <a href="http://www.ntcat.nt.gov.au">www.ntcat.nt.gov.au</a>.</li> <li>2. Download and fill in the form 'Application to Vary, Revoke or Reassess a Guardianship Order' (<a href="#">Form AG5</a>).</li> <li>3. Email your completed form to the NTCAT</li> </ol>

## Provide reports and come to the reassessment hearing

### See also

[3.3](#) on financial record keeping

[5.1](#) on NTCAT application hearings

To complete the reassessment process you will usually need to supply the following:

#### **Report by Medical Practitioner or other Health Practitioner** ([Form AG3](#))

A health professional familiar with the person gives evidence and expert opinion on whether the person's decision-making capacity is still impaired. The represented person must pay for all professional reports needed for the reassessment hearing.

#### **Primary Carer's Report** ([Form AG4](#))

A carer comments on the person's decision-making capacity, and health and care needs. Please note that a 'carer' is a separate role from a 'guardian', although you may be both.

#### **Financial Statement** ([Form AG10](#))

You detail the person's income and expenditure if you have authority for financial matters (see [section 3.3](#) for more).

The NTCAT will consider the written reports and may speak with the represented person, guardians and other interested people to decide if it should:

- keep the guardianship order in place
- change the order or the person's guardians.

Again, it is your choice whether you have a lawyer at this hearing. For more on hearings, see [section 5.1](#).

After the reassessment, the NTCAT will:

- confirm the order, or
- vary the order, and make another one in its place, or
- revoke the order.

## 5.4 Understanding our role

### **Office of the Public Guardian**

The Office of the Public Guardian was established on 28 July 2016 under the [Guardianship of Adults Act 2016](#) ('Guardianship Act').

Our core role is providing the Northern Territory community with guardianship, and information, advocacy, education, research, investigation and support about guardianship. People we help include:

- people thinking about becoming a guardian
- private guardians
- persons under a guardianship order, their families and their carers
- service providers and professionals with clients in these groups
- government and other stakeholders.

A public guardian in the Northern Territory is either the Public Trustee or the Public Guardian.

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## **The Public Guardian**

The Public Guardian is an independent statutory officer appointed by the Attorney-General and Minister for Justice under the Guardianship Act.

Beth Walker is the Territory's first Public Guardian, whose functions include:

### **Guardianship**

- Being a guardian for a person when appointed under a guardianship order or when a sole private guardian cannot act

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### **Support, advocacy and education**

- Advocating on behalf of persons with impaired decision-making capacity, including promoting understanding and awareness of relevant issues
- Promoting access to support services for these persons and their guardians, families and carers
- Advising and supporting guardians and prospective guardians
- Providing or encouraging education and research about relevant issues

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### **Process and compliance**

- Providing information to the NTCAT in regards to applications as directed by the NTCAT
- Monitoring and investigating complaints about guardian conduct
- Encouraging support service providers to monitor and review their service delivery
- Ensuring compliance with, and prosecuting offences against, the Guardianship Act
- Advising the Minister on relevant issues

The Public Guardian and her staff must always use their authority in line with the Guardianship Act and its guardianship principles.

## 6 Samples and checklists

### Sample guardianship order

**NTCAT**

Northern Territory  
Civil and Administrative Tribunal

**NORTHERN TERRITORY OF AUSTRALIA**  
*Guardianship of Adults Act*

FILE NO: 20170530

**ORDER**

IN THE CIVIL AND ADMINISTRATIVE TRIBUNAL  
AT TENNANT CREEK

IN THE MATTER OF LUCY SMITH

<b>PRESIDING MEMBER:</b>	NAME OF TRIBUNAL MEMBER
<b>DATE GIVEN:</b>	30 May 2017
<b>HEARING TYPE:</b>	HEARING

**THE TRIBUNAL ORDERS THAT:**

1. Under section 11 of the Guardianship of Adults Act, EZIAH SMITH is appointed guardian for the personal and financial matters of LUCY SMITH.
2. The authority of EZIAH SMITH under order 1 extends to the following personal matters of LUCY SMITH:
  - a. decisions regarding where and with whom she is to reside;
  - b. decisions regarding health care action within the meaning of the *Guardianship of Adults Act*;
  - c. decisions regarding her day to day care, including facilitating access to support services; and
  - d. decisions regarding legal matters relating to the above personal matters (including, without limitation, the engagement and instruction of legal representatives).
3. The authority of EZIAH SMITH under order 1 extends to all matters relating to the property and financial affairs of LUCY SMITH.
4. Order 1 expires on 30 October 2017.
5. The reassessment date for the purposes of section 36 of the *Guardianship of Adults Act* is 20 September 2017.

**DATED:** 30 May 2017



**BY THE TRIBUNAL**

[signature]

**DELEGATE OF REGISTRAR**

## Who to tell about your role as guardian

You may need to tell several people and organisations that you are a guardian for the person you represent. Exactly who you tell will depend on the types of decisions you can make.

**!** Don't forget to tell people or organisations overseas.

### If you have authority for health care decisions

- |   |  |
|---|--|
| <input type="checkbox"/> Doctor (GP)  | <input type="checkbox"/> National Disability Insurance Scheme  |
| <input type="checkbox"/> Dentist  | <input type="checkbox"/> Disability service provider           |
| <input type="checkbox"/> Medical specialists<br>(such as a kidney, ear, eye or heart specialist)                          | <input type="checkbox"/> Aged care service provider            |
| <input type="checkbox"/> Allied health professionals<br>(such as a physiotherapist, podiatrist or occupational therapist) | <input type="checkbox"/> Housing provider                      |
| <input type="checkbox"/> Hospital   | <input type="checkbox"/> Primary carer                         |
| <input type="checkbox"/> Medicare   | <input type="checkbox"/> Social worker                         |
|   | <input type="checkbox"/> Lawyer                                |
|   | <input type="checkbox"/> The person's family and close friends |

### If you have authority for financial decisions

- |  |   |
|--|---|
| <input type="checkbox"/> Gas, electricity and water providers and any other utilities                              | <input type="checkbox"/> Centrelink (including pensions, benefits and child support)  |
| <input type="checkbox"/> Phone and internet providers  | <input type="checkbox"/> Department of Veterans' Affairs                              |
| <input type="checkbox"/> Bank, building society, credit union, credit card provider or other financial institution | <input type="checkbox"/> Local council (for rates, services and pet registrations)    |
| <input type="checkbox"/> Insurance companies (such as for property, house, car or health insurance)                | <input type="checkbox"/> Australia Post (to redirect mail or manage a PO Box address) |
| <input type="checkbox"/> Superannuation fund/s and fund managers   | <input type="checkbox"/> Australian Taxation Office and accountant                    |
| <input type="checkbox"/> Clubs or membership organisations (such as a gym, pool or automobile association)         | <input type="checkbox"/> Lawyer   |
| <input type="checkbox"/> Any business or enterprise the person has a financial interest in                         | <input type="checkbox"/> The person's family and close friends                        |

## Record keeping for financial matters

If you have authority for financial decisions, you need to keep good records of what you spend for the person you represent and any income they get. You must work closely with other guardians or people involved in the person's care, and check the person has enough funds before approving expenses.

You will also need to give a financial statement ([Form AG10](#)) to the Northern Territory Civil and Administrative Tribunal when the guardianship order is reassessed.

### Receipts for things you buy or pay for the person

- |   |   |
|---|---|
| <input type="checkbox"/> Anything you buy (such as food, clothes, shoes and entertainment)  | <input type="checkbox"/> Bills you pay (such as accommodation, phone, internet, utilities and memberships)          |
| <input type="checkbox"/> Property-related bills (such as rates, mortgages or loan repayments)   | <input type="checkbox"/> Credit card or bank statements for the person and you, depending on how you pay for things |
| <input type="checkbox"/> Health-related bills (such as medical, dental and specialist visits, medicine, prescription glasses and insurance) | <input type="checkbox"/> Other expenses the guardianship order says you can pay for and claim                       |

### Income or money the person gets

- |   |   |
|---|---|
| <input type="checkbox"/> Pension or other government benefits   | <input type="checkbox"/> Income from paid work  |
| <input type="checkbox"/> Income from a business or enterprise the person has an interest in, including the sale of artworks or other property | <input type="checkbox"/> Income from super or investments, including bank interest, share dividends and rental income |

### Correspondence, decisions and payments

- |  |   |
|--|---|
| <input type="checkbox"/> Gas, electricity and water providers and any other utilities                              | <input type="checkbox"/> Centrelink (including pensions, benefits and child support)                |
| <input type="checkbox"/> Phone and internet providers  | <input type="checkbox"/> Medicare and other health-related costs                                    |
| <input type="checkbox"/> National Disability Insurance Scheme  | <input type="checkbox"/> Department of Veterans' Affairs  |
| <input type="checkbox"/> Bank, building society, credit union, credit card provider or other financial institution | <input type="checkbox"/> Insurance companies (such as for property, house, car or health insurance) |
| <input type="checkbox"/> Superannuation fund/s and fund managers   | <input type="checkbox"/> Australian Taxation Office and accountant                                  |
| <input type="checkbox"/> Any business or enterprise the person has a financial interest in                         | <input type="checkbox"/> Lawyer   |
|  | <input type="checkbox"/> Local council  |

 See our sample income and expenditure record over the page.

## Sample income and expenditure record



Record what you spent and received for the person under the month it happened.

All expenses must relate to what the guardianship order says you can do.

### INCOME and EXPENDITURE

for the period of

/ / to / /

Insert date

#### INCOME

Centrelink Pension and benefits \$ \_\_\_\_\_

Interest / investment income \$ \_\_\_\_\_

Other \$ \_\_\_\_\_

**TOTAL** \_\_\_\_\_

#### EXPENDITURE:

Nursing Home Fees / Rent \$ \_\_\_\_\_

Community Access / Respite \$ \_\_\_\_\_

Electricity \$ \_\_\_\_\_

Telephone \$ \_\_\_\_\_

Hospital / Medication \$ \_\_\_\_\_

Clothing \$ \_\_\_\_\_

Food \$ \_\_\_\_\_

Entertainment \$ \_\_\_\_\_

Personal Spending \$ \_\_\_\_\_

Holidays \$ \_\_\_\_\_

Insurance / Tax \$ \_\_\_\_\_

Bank Fee \$ \_\_\_\_\_

Other: please specify \$ \_\_\_\_\_

\$ \_\_\_\_\_

**TOTAL**

\$ \_\_\_\_\_





## Notes

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Office of the Public Guardian

☎ 1800 810 979

✉ [public.guardian@nt.gov.au](mailto:public.guardian@nt.gov.au)

[www.publicguardian.nt.gov.au](http://www.publicguardian.nt.gov.au)