

If a person may be able to make decisions with support, ACAT may not need to appoint a guardian or manager. For more information about supported decision making, contact the [**ACT Disability, Aged and Carer Advocacy Service \(ADACAS\)**](#).

The [Guardianship and Management of Property Amendment Act 2023](#) (the Amendment Act) commenced on **16 February 2023**. The Amendment Act amends the [Guardianship and Management of Property Act 1991](#) (the **Guardianship Act**). The [explanatory statement](#) and the [supplementary explanatory statement](#) provide background as to the legislative intent, particularly about the new provisions relating to supported decision-making.

Section 4 – Principles be followed by decision makers

Section 4 of the Guardianship Act has been amended to include a further decision-making principle in section 4(2)(a) that requires guardians and managers to provide or facilitate, as far as practicable, support to enable the protected person to understand the decision to be made, to participate in the decision-making process and to communicate their wishes.

Section 7 - Appointment and powers of guardians

Section 7 of the Guardianship Act has been amended by adding sub-sections 7(2)(a) and (b) to require the tribunal explicitly to consider, for the purpose of deciding whether a guardian can or needs to be appointed, whether the subject person is able to make, participate in and communicate their own decisions with available supports.

The relevant sections of section 7 are outlined below:

7 Appointment and powers of guardians

(1) This section applies if the ACAT is satisfied that—

- (a) someone has impaired decision-making ability in relation to a matter relating to the person’s health or welfare; and
- (b) while the person has the impaired decision-making ability—
 - (i) there is, or is likely to be, a need for a decision in relation to the matter; or
 - (ii) the person is likely to do something in relation to the matter that involves, or is likely to involve, unreasonable risk to the person’s health, welfare or property; and
- (c) if a guardian is not appointed—
 - (i) the person’s needs will not be met; or

- (ii) the person's interests will be significantly adversely affected.

Note 1 See s 8C in relation to appointment of a guardian for a child.

Note 2 A person's needs may be met, or the person's interests protected, under an enduring power of attorney (see [Powers of Attorney Act 2006](#)).

(2) In considering subsection (1) (c), the ACAT must consider—

- (a) if support necessary for the protected person to make, participate in and communicate their own decisions were to be provided or facilitated—if it is reasonably likely the person's—

- (i) needs would be met; and
- (ii) interests would be adequately protected; and

- (b) if it is reasonably likely that the necessary support can be provided or facilitated.

(3) The ACAT may, by order, appoint a guardian for the person, with the powers that the ACAT is satisfied are necessary or desirable to make decisions for the person in accordance with the decision-making principles.

Section 8 - Appointment and powers of managers

Section 8 of the Guardianship Act has been amended by adding sub-sections 8(2)(a) and (b) to require the tribunal explicitly to consider for the purpose of deciding whether a manager can or needs to be appointed, whether the subject person is able to make, participate in and communicate their own decisions with available supports.

The relevant sections of section 8 are outlined below:

8 Appointment and powers of managers

(1) This section applies if the ACAT is satisfied that—

- (a) someone has impaired decision-making ability in relation to the person's financial matters or a matter affecting the person's property; and

- (b) while the person has the impaired decision-making ability—

- (i) there is, or is likely to be, a need for a decision in relation to the matter; or
- (ii) the person is likely to do something in relation to the matter that involves, or is likely to involve, unreasonable risk to the person's health, welfare or property; and

- (c) if a manager is not appointed—
 - (i) the person’s needs will not be met; or
 - (ii) the person’s interests will be significantly adversely affected.
- (2) In considering subsection (1) (c), the ACAT must consider—
 - (a) if support necessary for the protected person to make, participate in and communicate their own decisions were to be provided or facilitated—if it is reasonably likely the person’s—
 - (i) needs would be met; and
 - (ii) interests would be adequately protected; and
 - (b) if it is reasonably likely that the necessary support can be provided or facilitated.
- (3) The ACAT may, by order, appoint a manager to manage all, or a stated part of, the person’s property, with the powers that the ACAT is satisfied are necessary or desirable to allow the manager to make decisions in relation to the property, in accordance with the decision-making principles.

Note The ACAT’s power to appoint a manager is restricted under s 8A.
- (4) The powers that may be given to a person’s manager are the powers that the person would have if the person were legally competent to exercise powers in relation to the person’s property.