Office of the PublicAdvocate

Information Sheet

Protecting the human rights of adults with decision-making disabilities

1. The Guardianship and Administration System

This information sheet provides a general introduction to the *Guardianship and Administration Act 1990*. More detailed information about each of the areas covered is available in the other information sheets produced by the Office of the Public Advocate. A full list of these information sheets and position statements is included later in this document.

Introduction

The *Guardianship and Administration Act 1990* recognises that adults who are not capable of making reasoned decisions for themselves may need additional support and assistance not only to ensure their quality of life is maintained, but also to protect them from the risk of neglect, exploitation and abuse.

Guardianship and administration

Guardianship and administration enables a substitute decision-maker to be legally appointed to make decisions in the best interests of an adult who is not capable of making reasoned decisions for themselves due to conditions such as dementia, intellectual disability, mental illness and acquired brain injury. This is referred to as a decision-making disability.

What is guardianship?

Guardianship applies to personal, medical and lifestyle decision-making. It is a way of legally appointing a responsible person (a "guardian") who can make decisions in the best interests of someone who is not capable of making those decisions themselves. A guardian may be given authority to make decisions about work, living arrangements or treatment on behalf of the person they represent.

What is administration?

Administration applies to financial and legal decision-making. Administration is a way of legally appointing a responsible person (an "administrator") to make financial or legal decisions in the best interests of an adult who is not capable of making those decisions for themselves. An administrator may be given authority to decide about matters such as the purchase or sale of assets, payment of debts and investment of money.

Appointment of a guardian or administrator

The State Administrative Tribunal handles matters relating to guardianship and administration. An application to the Tribunal to appoint a guardian or administrator is only necessary when a decision is required to resolve problems affecting the life of the person with the decision-making disability that cannot be resolved in a less formal way.

A person for whom a guardian or administrator is appointed loses the right to make decisions for themselves. To protect people's decision-making rights wherever possible, a guardian or administrator will only be appointed if the State Administrative Tribunal considers it necessary to safeguard the best interests of the person whose decision-making capacity is impaired, and if other 'less restrictive' options are not available or appropriate. For example, a person with capacity may choose to complete an enduring power of attorney and/or an enduring power of guardianship to safeguard their future and ensure a person of their choice is appointed to make decisions on their behalf.

Enduring Power of Guardianship and Enduring Power of Attorney

The *Guardianship and Administration Act 1990* provides two options for people who wish to nominate substitute decision-makers who will be able to make decisions for them if they ever lose the power to make decisions for themselves – an enduring power of guardianship and an enduring power of attorney. While an adult has full legal capacity, they can choose to complete either or both of these powers which cover different types of decisions – an enduring power of guardianship for personal, lifestyle and treatment decisions, and an enduring power of attorney for financial and property decisions.

Advance Health Directive

The *Guardianship and Administration Act 1990* provides this option for people who wish to state the type of treatment they receive in the future and want to provide this in a way that health professionals are able to follow their wishes. While an adult has full legal capacity they can choose whether to make an advance health directive and what sort of treatment decisions they want to include. For more information about advance health directives contact the Department of Health on 9222 2300 or visit https://www.healthywa.wa.gov.au/AdvanceHealthDirectives

Principles of the *Guardianship and Administration Act 1990*

The *Guardianship and Administration Act 1990* specifies the principles which apply to any determination about whether an adult with a decision-making disability may be in need of a substitute decision-maker to safeguard their best interests.

- **Best interests** - the primary concern is the best interests of the person with the decision-making disability.
- **Presumption of competence** - each person for whom an application is made is presumed to be competent and capable of making their own decisions unless conclusively proved otherwise.
- **Least restrictive alternative** - a guardian or administrator will be appointed only if it is established that there is no other appropriate way of meeting the person's needs which would be less restrictive of their freedom of decision and action.
- **Limited versus plenary** - the authority of an appointed substitute decision-maker will be limited to those areas in which the person is experiencing problems and requires decision-making support.
- **Respect for the person's wishes** - as much as possible, the wishes of the person with a decision-making disability (either directly expressed or based on their previous actions) will be taken into account in any decisions that are made on their behalf.

The Public Advocate

The Public Advocate is an independent statutory officer appointed under the *Guardianship and Administration Act 1990* to promote and protect the human rights, dignity and autonomy of adults with decision-making disabilities and to reduce their risk of neglect, exploitation and abuse.

The Public Advocate assists in protecting the human rights of adults who are not able to make reasoned decisions because of dementia, intellectual disability, mental illness or acquired brain injury. With an ageing population and an increasing prevalence of dementia, the number of Western Australians who are limited in their ability to make reasoned decisions in their own best interest is steadily increasing.

State Administrative Tribunal

The State Administrative Tribunal is an independent, statutory tribunal which is responsible for determining whether the appointment of a guardian or administrator is in the best interests of a person with a decision-making disability. The Tribunal:

- considers applications for the appointment of a guardian and/or administrator
- makes orders for the appointment of guardians and administrators
- reviews orders which have been previously made
- considers applications for intervention into enduring powers of attorney, enduring powers of guardianship, advance health directives and treatment decisions under the *Guardianship and Administration Act 1990*.

Additional information

The Public Advocate produces a range of other information sheets and position statements which can be accessed at www.publicadvocate.wa.gov.au. These are available in other languages and formats on request.

Other information sheets

2. The role of the Public Advocate
3. The role of the State Administrative Tribunal
4. Guardianship
5. Administration
6. Sterilisation
7. Customer Feedback and Service Standards
8. Enduring Powers of Attorney
9. Enduring Powers of Guardianship
10. Planning for the Future

Office of the Public Advocate position statements

1. Decisions about treatment
2. Restrictive Practices
3. Role of the Public Advocate as Guardian of Last Resort with authority to make accommodation decisions
4. Role of the Public Advocate as Guardian of Last Resort with authority to make treatment decisions
5. Role of the Public Advocate as Guardian of Last Resort with authority to make contact decisions
6. Role of the Public Advocate as Guardian of Last Resort with authority to make palliative care decisions
7. Decisions about medical research
8. Role of the Public Advocate as Guardian of Last Resort to make decisions about restrictive practices.
9. Role of the Public Advocate as guardian of last resort with authority to make decisions about services: NDIS

Telephone advisory service

The Public Advocate provides a telephone advisory service for people who have a personal or professional interest in the rights and needs of adults with a decision-making disability. An advisory officer can be contacted during office hours, Monday to Friday on 1300 858 455.

For further information contact

Office of the Public Advocate
PO Box 6293, EAST PERTH WA 6892
Telephone: 1300 858 455
Email: opa@justice.wa.gov.au
Web: www.publicadvocate.wa.gov.au

The information presented in this information sheet is provided voluntarily as a public service. The information and advice provided is made available in good faith but is provided solely on the basis that readers will be responsible for making their own assessment of the matters discussed herein and that they should verify all relevant representations, statements and information. Neither the State of Western Australia ("the State") nor any agency or instrumentality of the State nor any employee or agent of the State or of any agency or instrumentality of the State shall be responsible for any loss or damage howsoever caused and whether or not due to negligence arising from the use or reliance on any information or advice provided in the Guidelines.

July 2026