

The Guardianship and Administration Act 1990 is the law that covers people who may need someone to make decisions for them in their finances (Administration) and other life areas (Guardianship).

**DDWA is often contacted about Guardianship and Administration.  
These are the frequently asked questions.**

## What changes when my child turns 18?

- The child is legally considered an adult
- As an adult they can make their own decisions about their life and finances

However, if they do not have decision-making capacity, parents may still be able to make decisions on their behalf including making informal arrangements.

## What are Informal Arrangements?

This is usually the continuation of parental supports, as done before the age of 18, and can include Authorisation to act on behalf of an adult child, with Government Departments:

These are alternative ways to assist a person with a disability to engage with the supports they need. For example:

- Centrelink Nominee
- Medicare Authorisation to Act on behalf
- NDIS Nominee
- WA Hierarchy of Treatment Decision-Makers (Health)
- Voting - registration or removal from electoral role if needed
- Banking – third party authority access to account.

The appointment of a guardian is not necessary when informal arrangements can ensure the best interests of the person with a decision-making disability are being met if:

- The person with a decision-making disability can manage and maintain a reasonable quality of life for themselves
- The person is being adequately supported and cared for by others
- There are no personal or family conflicts about the person's care and support needs
- There are no major problems or issues that pose an immediate or imminent threat to the person's quality of life
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## Guardianship

### What is Guardianship?

Guardianship is when another person is appointed to make decisions for someone who does not have legal capacity.

The person appointed is known as the “Guardian”.

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. This is called the least restrictive alternative.

A parent as guardian (Private Guardian) is usually viewed to be a less restrictive option than a Public guardian from the Office of the Public Advocate.

### What is legal capacity?

This refers to whether a person is able to fully understand the decisions they need to make and the outcome of making those decisions.

All people are assumed to have legal capacity, unless there are concerns that they do not.

The assessment of legal capacity is usually done by a medical practitioner.

### What is a decision-making disability?

A general term used to describe someone who has a disability which affects their ability to understand information and to make informed and reasonable decisions.

This may be as a result of:

- intellectual disability
- mental illness
- acquired brain injury
- dementia
- substance related brain damage.

### What does best interests mean?

A guardian acts in the best interests for the represented person if they:

- encourage them to live in the general community and participate as much as possible in the life of the community
- encourage and assist them to become capable of caring for themselves and of making reasonable judgments in respect of matters relating to them
- protect them from neglect, abuse or exploitation
- consult with them, considering as far as possible, the wishes of that person as expressed, in whatever manner
- act in the way that is least restrictive of their rights, while providing the proper protection for them
- maintain any supportive relationships they have
- maintain their familiar cultural, linguistic and religious environment.

## Who can be a guardian?

A person can be a Guardian if they:

- over 18 years of age and have full legal capacity
- will preserve existing family relationships
- are compatible with the proposed represented person
- consider the wishes of the proposed represented person
- will be able to perform the functions of a guardian
- will act in the best interests of the proposed represented person
- they are not in a position where their interest's conflict or may conflict with the interests of the proposed represented person
- they are otherwise suitable to act as the guardian.

## What areas of life (Authorities) can a Guardian decide?

- Where a person is to live, whether permanently or temporarily
- With whom the person is to live
- Make treatment decisions including restrictive practices
- Services e.g. NDIS
- Whether the person should work and if so the nature of the type of work and matters related to work
- What education and training the person is to receive
- With whom the represented person is to associate
- Commence, conduct or settle any legal proceedings on behalf of the represented person, except proceedings relating to the estate of the represented person.

NB: Only the areas where decisions are needed will be given to a Guardian (Limited) unless all areas need to be covered (Plenary).

## What can a guardian not decide?

- voting
- making or changing a will
- marriage
- sterilisation
- abortion
- adoption.

## Can you have more than one guardian?

You can have joint private guardians.

They must agree on all the decisions made for the represented person.

## What are the guardianship options when I am gone, for my adult child?

The best way to plan for this is to have conversations with family/friends about your wishes for your child's future guardianship/administration.

To confirm your plans, you could include this information with your Will as a "Statement of Wishes".

For a person without legal capacity to make their own decisions, upon the death of their parent or legal guardian, a SAT application will be required to be made if another family member or friend agrees to take on this role.

## What is an Enduring Power of Guardianship?

An Enduring Power of Guardianship (EPG) is a legal document allowing you to appoint another person to make personal, life, treatment and medical research decisions for you (like a Guardian can) if you become unable to do so. This person is known as your Enduring Guardian.

- A person with intellectual disability may appoint someone to act on their behalf under an Enduring Power of Guardianship
- This can only be done by an adult with intellectual disability if they have legal capacity at the time it is signed.

## How long does a guardianship order last?

- Guardianship orders range from 1 year up to a maximum of five years. (Sometimes they can be less than a year)
- All orders are reviewed before the end date, to decide if a new order should be made, or the order should be revoked (if the person no longer requires a guardian).

A review can be conducted before the end date if circumstances change or if there is reason to do so.

## How does a Private Guardian get advice?

The Office of the Public Advocate (OPA) is happy to have contact from Private Guardians to talk through a problem.

In rare situations, an application can be made to the State Administrative Tribunal for direction on what action should be taken.

The OPA provides a comprehensive information booklet about the role and duties of a Guardian. This is the link to the Private Guardians guide:

<https://www.wa.gov.au/system/files/2024-08/private-guardians-guide.pdf>

## Administration

### What is an Administrator?

An Administrator (or Trustee) is appointed by SAT to make financial and legal decisions of a financial or estate nature in the best interests of someone not capable of making those decisions for themselves. An Administrator may be given authority to decide specific matters such as the sale of assets, payment of debts or investment of money.

Many Administrators have broad (plenary) authority and manage all of the person's estate and financial affairs and pay all the daily bills, purchase all essential items and they must keep detailed accounts.

The Public Trustee provides guidance and support to Private Administrators concerning their roles and responsibilities. They provide a comprehensive information booklet about the role and duties of an Administrator. This is the link to download the Private Administrators Guide:

<https://www.wa.gov.au/service/justice/administrative-law/private-administrator-support-public-trustee>

### Who can be an Administrator?

- A person over the age of 18
- A family member or other community member can be appointed as an Administrator if they can perform that role
- The Public Trustee can be pointed as an Administrator of last resort if no one else is able to do it
- A corporate trustee, who, in the opinion of the SAT will act in the best interests of the person.

### What is required of an Administrator?

An Administrator must:

- manage the person's money, making sure that they have enough to live on and meet their other financial obligations
- Keep good records
- Safeguard the person's funds in their best interests
- Submit accounts to the Public Trustee\* annually for examination.

\*There may be fees for the services of the Public Trustee.

### What is a Power of Attorney?

- A Power of Attorney is the legal authority one person gives to another person to act on their behalf in financial decisions (like an Administrator)
- A person with intellectual disability may appoint someone to act on their behalf under a Power of Attorney. This can only be done by an adult with intellectual disability if they have legal capacity at the time it is signed. The Power of Attorney will end if the person later loses legal capacity.

## What is an Enduring Power of Attorney?

- An EPA contains the same features as a Power of Attorney, with the exception that it 'endures' or continues to operate after the person loses legal capacity
- If you want to revoke (or cancel) an EPA an application to the SAT is required to do this.

## What if my adult child's bank insists on seeing a formal authority for me to operate their account?

This is a circumstance when an Administration order may need to be applied for, to get this authority.

## What is the State Administrative Tribunal (SAT)?

A SAT hearing is like a less formal court meeting where the Tribunal (a panel of 1 person or 3 people, called Members):

- 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 made previously
- Considers applications to determine who should make a treatment decision
- Allows a Guardian to consent to the use of Restrictive Practices

## How does the SAT apply the rules of the Guardianship & Administration Act?

- By limiting the authority of an appointed substitute decision-maker to those areas in which the person is having problems and requires decision-making support
- By, where possible, respecting the wishes of the person with a decision-making disability and taking their wishes into account when making decisions on their behalf.

## How does a SAT hearing work?

A SAT hearing is like a less formal court meeting where a Member considers evidence and makes a decision.

It is best, where possible, that the person concerned is present to have an opportunity to state their wishes.

The SAT will want to hear from a range of people with information and opinions about the person's needs to take this into account and can call witnesses if needed.

## What must the SAT hearing consider?

1. Whether the person has a decision-making disability
2. The impact of disability on how the person manages their own life and affairs
3. Whether a least restrictive alternative such as existing informal arrangements is operating effectively and is in the person's best interests
4. Whether the appointment of a guardian and/or administrator is in the best interest of the person with a decision-making disability
5. Who is most suitable to take on the role of guardian or administrator
6. How long the order remains in force before being reviewed
7. Whether the person is capable of voting in parliamentary elections

8. The Tribunal is legally required to review each order within five years, but a review may be conducted sooner
9. It can also review an order at any time on the application of the person concerned, their guardian or administrator, the Public Advocate or any person to whom the Tribunal grants leave to apply for review
10. Whether consent is required for a Restrictive Practice.

## Do I need a lawyer for a SAT hearing?

- Lawyers are not required at the SAT
- SAT is a less formal setting than a court, so the Member can guide you through the process if you don't have a lawyer
- There are private fee-for-services Lawyers who specialise in Guardianship and Administration, however legal representation is rarely needed, unless other parties involved in the hearing have a lawyer
- Legal Aid's Civil Law Division may be able to help you if you have current proceedings in the Tribunal, or if you are involved in a dispute with the Public Trustee about money.

## Do I need an Advocate to assist me with a SAT hearing?

An Advocate can be helpful at any stage of the process.

There are Advocates who specialise in Guardianship and Administration and the State Administrative Tribunal process.

They may be able to assist with these areas of the process:

- Pre – application discussion
- Application
- Attend the hearing with you.

You can find them via this link <https://askizzy.org.au/advice-and-advocacy/Perth-WA>

## How can Conflict lead to a SAT hearing?

Guardianship may be considered when there is:

- A need for somebody with legal authority to make decisions in the best interests of a person with a decision-making disability
- Unresolved conflict between family members and/or primary care providers about the person's best interests
- Concern that the person may be at risk of neglect, exploitation or abuse
- Differing/opposing parental opinions
- Concerns about financial decisions
- Changed circumstances
- Concerns about decisions that other people are making for them.

## How do I apply to SAT ?

A SAT application for Guardianship and/or Administration is made:

- online through the eCourts Portal of the Department of Justice

<https://ddwa.org.au>

- By requesting a hard copy form to complete and submit by mail, fax or hand deliver to the SAT.

The application must have information and evidence attached, including

- opinion about the person's disability and decision making capacity, from a medical practitioner (Medical Report) and
- information about their life situation by a person who knows them well (Service Provider Report).

### How long does the SAT process take?

- An application will lead to a hearing date being made for within 6-8 weeks
- An urgent hearing can be made if SAT is satisfied this is needed (such as to consent to urgent medical treatment or prevent the person being removed from their current accommodation or from Western Australia)
- A hearing is generally 1-2 hours long and can be attended in person, by phone or by video.

## References and Resources

### Guardianship

- **Office of the Public Advocate**

<https://www.wa.gov.au/organisation/departments/department-of-justice/office-of-the-public-advocate/guardianship-opa-information>

<https://www.wa.gov.au/organisation/departments/department-of-justice/office-of-the-public-advocate/planning-ahead>

Private Guardian's Guide : <https://www.wa.gov.au/media/28518/download?inline>

- **Legal Aid – Guardianship and administration**

<https://www.legalaid.wa.gov.au/find-legal-answers/managing-your-affairs/guardianship-and-administration>

### Administration

- **Public Trustee**

<https://www.wa.gov.au/service/justice/administrative-law/private-administrator-support-public-trustee>

Private Administrators Guide

<https://www.wa.gov.au/media/8067/download?inline>

### Easy Read Documents

**For SAT help:**

[https://www.sat.justice.wa.gov.au/E/ecourts\\_portal\\_help.aspx](https://www.sat.justice.wa.gov.au/E/ecourts_portal_help.aspx)

**To apply with SAT:**

<https://ecourts.justice.wa.gov.au/ecourtsportal/home/acknowledgetandc?ReturnUrl=%2feCourtsPortal%2f>

**What to expect at a SAT hearing – Easy Read Fact Sheet**

[https://www.sat.justice.wa.gov.au/E/easy\\_to\\_read\\_documents.aspx](https://www.sat.justice.wa.gov.au/E/easy_to_read_documents.aspx)

**DDWA Getting Help From An Advocate.**

<https://ddwa.org.au/resources/getting-help-from-an-advocate/>

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