

## DEFINITIONS

**Legal Capacity** means the ability of a person to make legally binding decisions about themselves and their property. It is the ability to make reasoned decisions based on information you need to understand.

**Guardian** is a person appointed by the State Administrative Tribunal to make decisions about living arrangements, support services or medical treatment on behalf of the representing person. A guardian can also be appointed through an Enduring Power of Guardianship.

**Administrator** is a person appointed by the State Administrative Tribunal (SAT) to make decisions in relation to financial and/or property matters on behalf of the represented person. The administrator can access bank accounts, pay bills, and sell or purchase property.

**Attorney** means a person who is appointed under an Enduring Power of Attorney.

**Public Trustee** is a government department, which provides administrators.

**State Administrative Tribunal** is the Tribunal, which has the power to review WA government administrative decisions.

**Office of The Public Advocate** is a government department, which provides guardians.

**Advance Health Directive (Living Will) (AHD)** is a record of your wishes for your future medical treatment. It is a document in which you say how you want to be treated by doctors if you cannot say so yourself, for example if you are unconscious or because of a mental illness.

**Will** means a legal document that states how you want your assets to be distributed after your death. You should choose an Executor who will be responsible for making sure your wishes are met in accordance with your will.

**Crisis Card** is a card, which tells anyone who reads it including police, ambulance and hospital staff about your illness, who to contact, where to find documents and about your medication.

## CONTACT

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## ABOUT THE MENTAL HEALTH LAW CENTRE

The MHLC is a state-wide Community Legal Centre specialising in mental health law. We are not a government body. We are an independent community based charity, funded to provide specialised legal services throughout Western Australia.

Our primary purpose is to provide confidential legal advice and representation to people who are involuntary patients in the mental health system. We may also be able to assist with other legal problems, but only if the problem relates directly to mental illness.

For further information about legal issues facing people subject to the Mental Health Act, please also refer to the Mental Health Law Centre's "Patients' Rights Guide".

### Disclaimer of Liability:

The writer, publisher and the Mental Health Law Centre (WA) Inc. disclaim liability as to the reliability and completeness of the information in this publication and disclaim any liability for action taken or not taken as result of this content or for any errors and omissions. It is emphasised that the reader may need legal advice in relation to their particular circumstances. Current as at **November 2015**

# mental health

LAW CENTRE

## GUARDIANSHIP

*Guardianship and Administration  
Act 1990 (WA)*

## What is Guardianship?

Guardianship orders are made to help people make important life decisions when they cannot do so themselves, for example because of mental incapacity. A guardian is appointed to make decisions for the represented person about things like medical treatment, work, education and living arrangements.

Guardianship orders can be plenary or limited. A **limited order** only authorises the guardian to make decisions about the matters specified in the order. A **plenary order** authorises the guardian to make any decisions, which a parent could generally make for a child. A guardian cannot make decisions for the represented person about:

- adopting children;
- voting in elections;
- sterilisation;
- marriage of minors;
- what is to be in the represented person's will; or
- financial matters and your property.

Property and financial decisions are made by your Administrator/Attorney. For information about Administration, see our Administration brochure.

The State Administrative Tribunal (SAT) may appoint a guardian for a represented person if the person is:

- unable, for example by reason of mental impairment, to look after or make reasonable judgments about their own health and safety;

and/or

- in need of oversight, care or control in the interests of their own health and safety, or for the protection of others.

When deciding who should be your guardian, the SAT must take into account:

- compatibility of the guardian with you;
- your wishes; and
- the ability of the person to undertake the role.

A guardian could be a friend, family member or from the Public Advocate. A guardian must do what they can to encourage you and assist you to become capable of taking care of your own life, in the long term.

For more information and/or application forms go to: [www.publictrustee.wa.gov.au](http://www.publictrustee.wa.gov.au)

## Managing My Affairs in the Future: How Should I Plan?

A number of steps can be taken to prepare for any future incapacity.

### 1. Make an Enduring Power of Guardianship

Your Enduring Power of Guardianship (EPG) allows you to give another person (donee) the legal authority to make decisions about your lifestyle and treatment. An EPG donee could be authorised to make decisions about where you live, the support services you have access to and the treatment you receive.

While you have legal capacity, you may appoint or revoke someone as your Guardian who :

- is over 18 years of age; and
- has legal capacity.

You can revoke your EPG at anytime you have capacity to do so.

You can appoint more than one enduring guardian as joint enduring guardians, but they must act jointly, meaning they must be in agreement about any decision that they make on your behalf.

You may also appoint substitute enduring guardians who would take over decision making responsibilities in the event one or more of your enduring guardians is unable to continue in the role.

The scope of authority given to your enduring guardian is determined by you when you make your EPG.

You may authorise your Enduring Guardian to make the same range of decisions as a plenary guardian, who is appointed by the SAT.

For more information go to: [www.publicadvocate.wa.gov.au](http://www.publicadvocate.wa.gov.au)

### 2. Make an Advanced Health Directive (AHD) (Living Will)

An AHD is a document for recording your directions about future medical treatment. Treatment means medical, surgical or dental treatment, or other health care. Your decision or preference can relate to commencing/refusing and commencing/continuing treatment. The AHD records your direction(s) about your future health treatment if you later become incapable of making those decisions, (for example, life-support, palliative care).

An AHD is different from an EPA or EPG because you make specific directions about your treatment before the need for decision(s) arise(s). An AHD generally prevails over the direction of a guardian. You cannot direct the doctors to

give you specific treatment by an AHD, only that you consent to or refuse certain treatment.

You may wish to discuss with a doctor who can advise you about treatment options available. Your AHD can be stopped if you have capacity. It should be reviewed regularly.

It is undecided whether or not your AHD could override an involuntary treatment order under the Mental Health Act, but it may be helpful and/or persuasive to the psychiatrist making decisions about your treatment to know about your preferred treatment and why.

### 3. Make a Crisis Card

You can make a crisis card to carry with you to tell people about your illness in the event that you cannot communicate clearly. It can contain information about who to contact if you need help and where they can find documents. You should carry this card with you at all times.

For example:

"My name is John Smith. I have schizophrenia. If I am distressed contact Mary Smith on .....

My medications are ....

Side effects of my medication are .....

My living will for mental and physical health care is held at .....

On my medication I may appear .....

If I am not on my medication I may appear ....."

## Review of Your Guardianship Order

If you have or are recovering from a mental illness, the Mental Health Law Centre Can assist you with legal advice and representation in a State Administrative Tribunal review of your guardianship order or EPG, resources permitting.