



CHIEF PSYCHIATRIST
of Western Australia



OFFICE of the CHIEF PSYCHIATRIST

Guardianship Orders; Guardians; Persons Responsible

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Introduction

- Brief overview of the law relating to guardianship orders; guardians; and persons responsible under the *Guardianship and Administration Act 1990* (**GAA Act**).
- This is not legal advice, and it may be necessary to seek advice in relation to specific circumstances that you encounter in the course of carrying out your duties.



What is a guardianship order?

A **guardianship order** is an order made by the State Administrative Tribunal (**SAT**) under the *Guardianship and Administration Act 1990* (**GAA Act**), that appoints a person as another person's **guardian**.



What is a guardian?

A **guardian** is person who is responsible for making personal; lifestyle; and treatment decisions on behalf of a person who lacks the capacity to make their own decisions.

The types of decisions a guardian can make will depend on the type and terms of the guardianship order.



Types of guardianship orders

- A person may be appointed by the SAT as a **plenary guardian** or a **limited guardian**.
- Order under which they are appointed will be called a **plenary guardianship order** or a **limited guardianship order**.
- The person in respect of whom a plenary or limited guardianship order is made is called a **represented person**.



Who can be a represented person?

- A **represented person** must be:
 - (a) 18 years of age or over;
 - (b) incapable of looking after their own health and safety;
 - (c) unable to make reasonable judgments in respect of matters relating to themselves;
 - (d) in need of oversight, care or control in the interests of their own health and safety or for the protection of others; and
 - (e) in need of a guardian.



Who can be a guardian?

- A **guardian** must be someone who:
 - - (a) is 18 years of age or over;
 - (b) has consented to act as guardian; and
 - (c) in the opinion of the SAT:
 - (i) will act in the best interests of the person in respect of whom the application is made;
 - (ii) is not in a position where their interests conflict or may conflict with the interests of the person; and
 - (iii) is otherwise suitable to act as the guardian of that person.
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- The **Public Advocate** can be appointed as a person's guardian - only if no one else "suitable and willing" to act as the person's guardian.



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Who can apply for a guardianship order?

Anyone can apply for a guardianship order with respect to another person, including family members, friends, clinicians, or the Public Advocate.



How do you apply for a guardianship order?

- An application for a guardianship order can be made orally; in writing; or partly in writing and partly orally.
- An application can be made online on the eCourts portal as follows:
 - (a) Click on this link <https://ecourts.justice.wa.gov.au/eCourtsPortal/>
 - (b) Click on “State Administrative Tribunal”
 - (c) Click “Yes” to commence a new matter with the SAT
 - (d) Click “I know the Act and Section I wish to apply under”
 - (e) From the dropdown menu select “Guardianship and Administration Act 1990”
 - (f) From the dropdown menu select “Section 40(1) – Application to appoint a guardian and/or administrator”
 - (g) Follow the instructions.



Can the SAT deal with an application on an urgent basis?

- Yes, if the SAT decides it is appropriate to do so.
- The GAA Act provides that the executive officer of the SAT must give **notice** of a hearing of an application to **specified persons at least 14 days before the hearing**.
- **Specified persons** - applicant; person in respect of whom the application is made; nearest relative of the person; Public Advocate; and any other person the executive officer considers has an interest in the matter.
- In exceptional circumstances, the **SAT may shorten the 14-day period**.



What decisions can a guardian make?

- A **plenary guardian** may make treatment decisions on behalf of a represented person, as well as decisions regarding the following:
 - (a) where the represented person is to live, whether permanently or temporarily;
 - (b) with whom the represented person is to live;
 - (c) whether the represented person should work and, if so, the nature or type of work, for whom they are to work;
 - (d) what education and training the represented person is to receive; and
 - (e) with whom the represented person is to associate.
- A **limited guardian** may make only those decisions that are specified in the guardianship order.



What is treatment; urgent treatment; treatment decision?

- **“treatment”** is medical, surgical or dental treatment; or other health care;
- **“treatment decision”** is *“a decision to consent or refuse consent to the commencement or continuation of any treatment of the person”*;
- **“urgent treatment”** is treatment urgently needed by a patient:
 - (a) to save the patient’s life; or
 - (b) to prevent serious damage to the patient’s health; or
 - (c) to prevent the patient from suffering or continuing to suffer significant pain or distress.



Who can consent to treatment for an incompetent adult?

- A **person responsible** - if the person does not have a guardian (GAA s. 110ZD).
- A person responsible must be:
 - (a) of full legal capacity;
 - (b) reasonably available; and
 - (c) willing to make a treatment decision.



Who is a person responsible?

- The patient's **spouse or de facto** partner if that person —
 - (i) has reached 18 years of age; and
 - (ii) is living with the patient.
- The patient's **nearest relative** who maintains a close personal relationship with the patient.
- The patient's **primary provider of care and support** (including emotional support) to the patient; has reached 18 years of age; but is not remunerated for providing that care and support.
- Any other person who —
 - (i) has reached 18 years of age; and
 - (ii) maintains a **close personal relationship** with the patient.



Who can consent to urgent treatment for an incompetent adult?

- If practicable, **urgent treatment** should be given to an adult who lacks capacity:
 - (a) in accordance with an advance health directive; or
 - (b) with the consent of the person's guardian or enduring guardian, or the person responsible for the person.
- A health professional may provide urgent treatment to the person without consent, if none of the above is possible or practicable.



Can a guardian make decisions regarding restraint?

- A guardianship order must specifically state that the guardian can make decisions regarding restraint of the represented person.
- If the order does not include this, then a guardian cannot consent to restraint.