

GUARDIANSHIP AND ADMINISTRATION ACT 1990

The *Guardianship and Administration Act 1990* administered by the State Administration Tribunal (State Administrative Tribunal) recognises that people who are not capable of making reasonable judgements for themselves may need someone to make decisions for them, not only to ensure their quality of life is maintained, but also to protect them from the risk of neglect, exploitation and abuse.

Information about the function and scope of the *Act* can be found at:

[State Administrative Tribunal \(State Administrative Tribunal\)](#)

T: 08 9219 3111

T: 1300 306 017 (cost of a local call)

Address: Level 6, State Administrative Tribunal Building, 565 Hay Street Perth WA 6000

P: GPO Box U1991 Perth WA 6845

W: <https://www.sat.justice.wa.gov.au/>

To view the *Guardianship and Administration Act 1990* go to:

https://www.legislation.wa.gov.au/legislation/statutes.nsf/main_mrtitle_406_homepage.html



Enduring Power of Attorney

An Enduring Power of Attorney (EPA) is a legal agreement that allows you to appoint a trusted person to make decisions regarding your finances and property on your behalf.

What are the laws governing an Enduring Power of Attorney?

The rules of an Enduring Power of Attorney are set out in Part 9 of the *Guardianship and Administration Act 1990*.

To view Part 9 of the *Guardianship and Administration Act 1990* go to:

[https://www.slp.wa.gov.au/statutes/swans.nsf/\(DownloadFiles\)/Guardianship+and+Administration+Act+1990.pdf/\\$file/Guardianship+and+Administration+Act+1990.pdf](https://www.slp.wa.gov.au/statutes/swans.nsf/(DownloadFiles)/Guardianship+and+Administration+Act+1990.pdf/$file/Guardianship+and+Administration+Act+1990.pdf)

Can a person continue to manage financial and property matters even if they have made an Enduring Power of Attorney?

When you make an Enduring Power of Attorney you can choose for it to start straight away or only if you lose legal capacity.

If you choose for it to start straight away, as long as you have capacity, you can continue to manage your own financial affairs and property matters, but your enduring attorney can start using the authority you have given them to help with these matters, if you want them to.

If you choose for it to start only when you lose capacity, then your enduring attorney cannot use the authority you have given them until they make an application to the State Administrative Tribunal (State Administrative Tribunal) and the State Administrative Tribunal determines that you have lost capacity.

Why would someone appoint an Enduring Attorney when completing an Enduring Power of Attorney?

By completing an Enduring Power of Attorney, a person or agency who you know and trust, can be authorised to make property and financial decisions for you in your best interests, in the event that you lose capacity or are physically unable to manage your finances.

If you do not appoint an Enduring Power of Attorney, there may be no one to make decisions on your behalf if you lose capacity and an application will need to be made to State Administrative Tribunal to have someone appointed.

Unlike a Power of Attorney an Enduring Power of Attorney remains valid after you lose legal capacity.

Having an Enduring Power of Attorney can act as a safeguard against future financial abuse in the event you lose capacity as you will have given someone you trust the authority to look after your

finances and property affairs.

Who can complete an Enduring Power of Attorney?

An Enduring Power of Attorney can be executed by anyone over the age of 18, who has full legal capacity.

'Full legal capacity' means that a person must be able to understand the nature and effect of the document they are completing.

An Enduring Power of Attorney cannot be made by a person whose capacity might be in doubt due to mental illness, brain injury, cognitive impairment or dementia.

Who should be appointed an Enduring Power of Attorney?

Giving someone else the authority to manage your financial affairs and property matters is a very serious decision. Therefore, you must ensure the person is someone you know well and can trust to look after your finances in your best interests.

How do you appoint an Enduring Power of Attorney?

To appoint an attorney, you must complete an Enduring Power of Attorney form. You may appoint more than one person, but you must stipulate whether they can act independently of each other (i.e. 'act jointly or severally') or whether all signatories have to agree on all decisions made on your behalf (i.e. 'act jointly').

What happens once the Enduring Power of Attorney has been drafted?

To make your Enduring Power of Attorney legal, it needs to be signed by you and your enduring attorney. Your signature must be witnessed by two (2) independent witnesses.

One should be someone who can legally witness a Statutory Declaration, such as a Justice of the Peace, lawyer, doctor, teacher, police officer, pharmacist or nurse.

The other witness can be anyone who is over 18. Your enduring attorney must accept their appointment by signing the Enduring Power of Attorney. Their signature does not need to be witnessed.

Where to Find an Enduring Power of Attorney Form

Go to: Office of the Public Advocate and download for free the **Enduring Power of Attorney Kit**.

The kit has step-by-step instruction to help you complete the form, and two (2) copies of the form at the back of the kit:

<https://www.wa.gov.au/government/publications/enduring-power-of-attorney-information-kit>

Go to: Office of the Public Advocate and download for free the more comprehensive **Guide to Enduring Power of Attorney** which includes Frequently Asked Questions (FAQs).

<https://www.wa.gov.au/government/publications/guide-enduring-power-of-attorney>

You can buy a copy of the **Enduring Power of Attorney Kit** from the **Citizens Advice Bureau** for approximately \$2.00 by:

T: 08 9221 5711

W: <https://cabwa.com.au>

Visit: Your local branch of the Citizens Advice Bureau

Alternatively: A solicitor or the Public Trustee may prepare an Enduring Power of Attorney on your behalf.

Abuse of an Enduring Power of Attorney

It is important to remember that who you appoint as your enduring attorney must exercise their power with reasonable diligence to protect your interests. If they fail to do so they can be held liable to you for any losses incurred.

A misuse of an Enduring Power of Attorney occurs when the enduring attorney abuses the power given to them in order to benefit themselves. This can be a form of financial abuse.

An example of a misused Enduring Power of Attorney includes the following:

- Jane is 85 years of age, hard of hearing and frail. She is still cognitive but cannot get out to the bank to pay her bills and withdraw money
- Jane sees her lawyer and signs an Enduring Power of Attorney in which she appoints her daughter Betty as her enduring attorney for financial matters with the powers to start immediately
- Betty takes the document to Jane's bank. The Bank officer looks at the document and accepts that Betty is able to act as Jane's enduring attorney for financial matters immediately and notes this in the bank records
- Betty is having financial problems. Every week she shops for Jane, buying groceries with Betty's bank card, but she also makes cash withdrawals and rather than give this money to Jane, she keeps it for herself
- Jane does not monitor her bank account statements and is unaware that money is being used by Betty in this way

Important Takeaway Point



Who you appoint must act in your best interests in fulfilling the requirements of your Enduring Power of Attorney. If you believe your Enduring Attorney is not acting in your best interest you can contact the **Office of the Public Advocate** telephone advisory service on **1300 858 455**.

If your Enduring Power of Attorney is abusing their role, an application can be made to the State Administrative Tribunal which has a role in overseeing the use of their powers. The State Administrative Tribunal can end an Enduring Power of Attorney if it is not being used appropriately and appoint an administrator to manage your finances instead.

Applications to the State Administrative Tribunal can be made by you or by anyone who is concerned about you and whether your finances are being managed in your best interests.

Revoking an Enduring Power of Attorney

To revoke the Enduring Power of Attorney you must have full legal capacity. This should be done in writing. If you lose capacity, an application must be made to the State Administrative Tribunal to decide if the Enduring Power of Attorney should be revoked.

Help to prepare an Enduring Power of Attorney

Public Trustee

For new inquiries for help with preparing an Enduring Power of Attorney ([fee is payable](#)).

T: 1300 746 116

Citizens Advice Bureau

For help with drafting an Enduring Power of Attorney ([fee is payable](#)) and to access a fact sheet on Enduring Power of Attorney.

T: 08 9221 5711



For More Information about an Enduring Power of Attorney

Office of the Public Advocate

The Office of the Public Advocate operates a telephone advisory service from 9.00am-5.00pm Monday to Friday with recorded information. It is available at other times and has a guide, an information kit and an information sheet available.

T: 1300 858 455

T: 08 9278 7300

State Administrative Tribunal

The State Administrative Tribunal provides information on applications for intervention into Enduring Powers of Attorney.

T: 08 9219 3111

T: 1300 306 017 Local call cost

Enduring Power of Guardianship (EPG)

An is a legal document that authorises a person of your choice, to make important personal, lifestyle and treatment decisions on your behalf should you ever become incapable of making such decisions for yourself.

By creating an Enduring Power of Guardianship, you can rest easy knowing that, if at some point in the future your capacity to make decisions is impaired, someone you trust will have the power to make important decisions on your behalf. You may appoint more than one person in this role, but it is important to note that all enduring guardians you appoint must agree in all decisions (act 'jointly').

This is different to an Enduring Power of Attorney, where you can also appoint more than one person but you can choose whether your enduring attorneys are able to make decisions independently of each other ('act jointly or severally') or whether they all have to agree on all decisions made on your behalf ('act jointly').

Given enduring guardians need to agree on decisions, it is a good idea to think about whether the people you want to appoint will work well together.

Who can appoint an Enduring Power of Guardianship?

To make an Enduring Power of Guardianship you must:

- Be 18 years of age or older
- Have full legal capacity (this means you must be able to make a formal agreement and understand the implications of statements contained in that agreement)

When does an Enduring Power of Guardianship come into operation?

An Enduring Power of Guardianship comes into operation only if you are no longer able to make reasonable judgments about personal, lifestyle or treatment matters.

If you do not appoint an Enduring Power of Guardianship, then other people will decide if you have lost capacity to make these judgements, such as your spouse/partner, children, siblings, carers and doctors.

How is an Enduring Guardian appointed?

For an Enduring Guardian to be appointed, you must complete the relevant form that is specified in the *Guardianship and Administration Regulations 2005 (WA)*.

The person you are appointing as your enduring guardian does not need to be with you when you sign the Enduring Power of Guardianship, but you must sign with two witnesses present. The person you are appointing as your enduring guardian cannot be a witness.

The Enduring Power of Guardianship will not be valid until the person you are appointing as your enduring guardian signs that they accept the appointment. They must also sign with two witnesses present.

Witnesses must be over the age of 18 and one of the two witnesses must be a person authorised to witness statutory declarations under the *Oaths, Affidavits and Statutory Declarations Act 2005 (WA)*.

Go to: Office of the Public Advocate and download for free the **Appointment of an Enduring Guardian Form** at:

https://www.publicadvocate.wa.gov.au/files/epg_kit.pdf

Where should you keep an Enduring Power of Guardianship?

There is no formal registration process for an Enduring Power of Guardianship. Therefore, it is vital that you and your chosen guardian know where the original document will be kept.

How can an Enduring Power of Guardianship be revoked?

An Enduring Power of Guardianship can be revoked by you, as the appointor, at any time while you still have legal capacity. However, if you lose capacity, the enduring guardian must apply to the State Administrative Tribunal to alter or cancel the arrangement.

What decisions can an Enduring Guardian make on your behalf?

The scope of authority given to an Enduring Guardian is determined by the appointer when making an Enduring Power of Guardianship.

You may authorise your Enduring Guardian to make the same range of decisions as a Guardian, who is appointed by the State Administrative Tribunal. You may also limit the decisions to be made by your Guardian.

Your Enduring Guardian can make all or some of the following decisions on your behalf:

- Decide where you live, whether permanently or temporarily
- Decide who you live with
- Decide whether or not you work and, if so, any matters related to that work
- Make treatment decisions on your behalf to any medical, surgical or dental practitioner or other health care (including palliative care and life-sustaining measures such as assisted ventilation and cardio-pulmonary resuscitation)
- Decide what education and training you receive
- Determine who you associate with
- Commence, defend, conduct or settle any legal proceedings on your behalf, except proceedings that relate to your property or estate
- Advocate for and make decisions about the support services you access
- Seek and receive information on your behalf

In brief, you may restrict the decision-making authority of your Enduring Guardian. For example, you may authorise your Enduring Guardian to make decisions about any treatment you receive, but not about where you live or with whom you associate.

What can an Enduring Guardian NOT DO?

An Enduring Guardian cannot do or make the following decisions on your behalf:

- Make decisions about your finances, property or estate (which are made by an enduring attorney under an Enduring Power of Attorney if you have one)
- Vote for you in an election
- Consent to an adoption
- Consent to a marriage involving you or a person under 18 years of age
- Consent to you being sterilised without the approval of the Tribunal
- Make or change your Will without an order from the Supreme Court of Western Australia

For Further Information regarding an Enduring Guardian

Office of the Public Advocate

The Public Advocate (an independent statutory office within the Department of Justice) provides advice and information on guardianship and administration and Enduring Powers of Attorney and Enduring Powers of Guardianship.

Address: PO Box 6293, East Perth WA 6892

T: 08 9278 7300

E: opa@justice.wa.gov.au

W: www.publicadvocate.wa.gov.au

State Administrative Tribunal

The State Administrative Tribunal (the Tribunal falls under the portfolio of the State Attorney General within the Department of Justice) can be contacted for information and advice on applications for Guardianship, Administration, Enduring Powers of Guardianship, Enduring Powers of Attorney and Advance Health Directives.

Address: Level 6, State Administrative Tribunal Building, 565 Hay Street, Perth WA 6000

T: 08 9219 3111

E: sat@justice.wa.gov.au

W: www.sat.justice.wa.gov.au