



GUARDIANSHIP AND ADMINISTRATION Help for Adults with a Decision-Making Disability

(ALSWA website version)

Aboriginal Legal Service of Western Australia (Inc)

Striving for justice for Aboriginal and Torres Strait Islander peoples for over thirty years

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Guardians and administrators

If an adult is incapable of making reasoned decisions about their finances or their daily life, you can apply to the State Administrative Tribunal to have someone else legally appointed to make decisions for them.

A “guardian” can be appointed to make decisions about the person’s daily life.

An “administrator” can be appointed to make decisions about the person’s legal and financial affairs.

When to apply

A person with a decision-making disability does not necessarily need a guardian or administrator. They might still be able to manage their own affairs, maybe with outside help.

Staff at the **State Administrative Tribunal**

(local call fee 1300 306 017)

and staff at the **Office of the Public Advocate**

(freecall 1800 807 437)

can tell you what agencies and other options are available to help the person without having to get a guardian or administrator.

However a person might need a guardian or administrator if:

- They can’t look after themselves to a reasonable level
- No-one else who has their best interests at heart is looking after them to a reasonable level
- The family disagrees about how to care for them
- There are problems that threaten their quality of life, finances or family situation.

Power of attorney

A power of attorney gives legal authority to a person or agency (“the donee”) to make property and financial decisions on behalf of another person (“the donor”)

The donor decides who the donee will be.

Only a donor who is capable of making their own decisions can do a power of attorney.

If the person has already lost the ability to make their own decisions, they cannot do a power of attorney. They might need a guardian or administrator instead.

There are two kinds of powers of attorney:

- An **ordinary** power of attorney ends if the donor loses the ability to make their own decisions. If this happens, the donor might then need a guardian or administrator
- An **enduring** power of attorney lasts even if the donor later loses the ability to make their own decisions.

Who can apply for a guardian or Administrator

Anyone can apply to the State Administrative Tribunal for a guardian or administrator to be appointed for a person who has a decision making disability, but:

- Only a person who consents, is 18 or older, who will act in the person’s best interests and encourage their independence as much as possible, and who has no personal interests that conflict with the person’s best interests, can be a guardian.
- Only a person over 18 or a corporate trustee that consents and will act in the person’s best interests can be an administrator.

How to apply

The State Administrative Tribunal prefers you to use its application form. You must describe the problems the person is having or the issues that threaten the person’s quality of life. You must also describe why having a guardian or administrator is the best option for the person.

You must also get evidence from the person’s doctors, specialists, social workers and professional carers to show that the person cannot make proper decisions for themselves. The State Administrative Tribunal has an outline you can give these professionals to set out this information.

When you have given this information to the Tribunal, there will be a hearing. You do not need a lawyer for the hearing, but if you want one the Tribunal will usually let you. The Tribunal might arrange for the person who has the decision-making disability to have a lawyer for the hearing.

At the hearing the Tribunal will normally hear from:

- The person who made the application for the guardian or administrator

- The person who has the decision-making Disability
- Any person who wants to be guardian or administrator
- Everyone who has a proper interest in the person
- Everyone who has given a report to the Tribunal about the person.

The Tribunal will then decide whether the person has a decision-making disability, and if so, whether they need a guardian or administrator.

The Tribunal will only take away the person's right to make their own decisions as a last resort, based on what the Tribunal decides is best for the person.

If the Tribunal does decide to appoint a guardian or administrator it will also decide who, and what decisions they can make for the person.

Normally people pay their own costs for the hearing, but there are exceptions.

If you are not happy with the Tribunal's decision, you can ask for the decision to be reviewed or appealed.

There is a 28 day time limit. In some cases the time limit can be extended.

What happens after a guardian/administrator is appointed

The authority of the guardian and administrator begins when the Tribunal makes the order appointing them, or at a later time if the Tribunal says so. They must act together in the best interests of the person. Their decisions are as legally binding as if the person made the decision themselves.

Guardians and Administrators have legal duties, for example an administrator can be held liable if money gets lost due to the administrator's poor accounting or financial management.

There are some things guardians and administrators are not allowed to do, for example vote, make a will, or make gifts for the person, or punish the person. If the guardian or administrator is not sure if they are authorised to do something, or whether something is in the person's best interests, they can get help from the Office of the Public Advocate, the State Administrative Tribunal or a lawyer.

The Tribunal may allow an administrator to be paid for their work. A guardian does not get paid. Both administrators and guardians are repaid certain expenses made on behalf of the person.

The Tribunal will set a date for automatic review of the order within 5 years.

Reviews can also happen for other reasons, for example if the guardian or administrator wants to cancel the order or becomes incapable or unfit to do the work, or if the person is not being adequately cared for.

**More information is available from
State Administrative Tribunal - local call fee 1300 306 017
and from Office of the Public Advocate Freecall 1800 807 437**

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The information contained in the website version of this ALSWA pamphlet is correct as at May 2008, HOWEVER the law may change at any time.

Material in this publication does not constitute legal advice, but is intended for information only.

For legal advice please contact your nearest office of the Aboriginal Legal Service of Western Australia (Inc). ALSWA'S Head Office is at 7 Aberdeen Street, Perth and other ALSWA offices are located at Albany, Broome, Bunbury, Carnarvon, Derby, Fitzroy Crossing, Geraldton, Halls Creek, Kalgoorlie, Kununurra, Laverton, Meekatharra, Newman, Northam, Roebourne, South Hedland and Warburton.



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