

## About Ruah Legal Services

Ruah Legal Services launched in 2019 when the Mental Health Law Centre (MHLC) merged with Ruah Community Services. MHLC has been helping Western Australians with mental illness for more than 20 years. MHLC continues its important work as a specialist centre of Ruah Legal Services. We are an independent, not for profit, community legal service and Western Australia's experts in mental health law.

If you have a legal issue connected to a mental illness and you are experiencing financial hardship, our qualified and experienced lawyers can give you free confidential advice and represent you in court.

We specialise in involuntary treatment and matters under the *Mental Health Act (WA)*. We can also advise on:

- Criminal matters
- Guardianship and Administration
- Mentally Impaired Accused Review Board hearings
- Responding to Restraining Orders
- Care and Protection matters
- Mental Health Tribunals

To find out if you are eligible for assistance please call our Telephone Advice Line or visit [ruahlegal.org.au](http://ruahlegal.org.au).

## Need legal advice?

### Call our Telephone Advice Line

Monday to Friday 9am to 4pm  
08 9328 8012 or Freecall 1800 620 285

### Visit us online

[ruahlegal.org.au](http://ruahlegal.org.au)

### Connect with us



### Ruah Legal Services

PO Box 8078, Subiaco East WA 6008  
Facsimile: (08) 6323 3382  
Email: [legalservices@ruah.org.au](mailto:legalservices@ruah.org.au)

## Everyone is welcome. Everyone belongs.

Ruah Legal Services acknowledges and respects the traditional Aboriginal and Torres Strait Islander owners of the land on which we work, the first people of this country. We pay our respects to their culture and their Elders past, present and future.



### Disclaimer

The writer, publisher and Ruah Legal Services 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.

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# Guardianship Orders

## in Western Australia

*Guardianship and Administration Act 1990 (WA)*

## What is a Guardianship Order?

A Guardianship Order can be put in place to help a person make important personal life decisions when they cannot do so themselves, usually because they have a mental illness or disability.

The person appointed to make personal decisions on someone else's behalf is called a Guardian or Advocate.

## When is a Guardian appointed?

A Guardian is appointed by the State Administrative Tribunal if a person, is:

- unable to look after themselves or make reasonable judgments about their own health and safety; or
- in need of oversight, care or control in the interests of their own health and safety, or for the protection of others.

## Who can be a Guardian?

A Guardian:

- can be a friend, family member or the Office of the Public Advocate;
- must be at least 18 years of age and consent to act as Guardian to the person about whom the application is being made;
- must always act in the person's best interests and encourage the person's independence, personal decision-making and participation in community life; and
- should not be in a position where their own interests conflict with the best interests of the represented person.

When deciding who should be a Guardian, the State Administrative Tribunal will take into account:

- whether the proposed Guardian is compatible with the person being represented;
- their ability to undertake the role of Guardian; and
- the wishes of the represented person.

## What does a Guardian do?

There are two kinds of Guardianship Orders which determine what a Guardian is able to do:

- Plenary order – the Guardian is authorised to make any decisions, similar to the authority a parent generally has over a child.
- Limited order – allows the Guardian to make decisions but only about the matters specified in the order.

A Guardian cannot make decisions for the 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 property.

## How is a Guardianship Order made?

An application for a Guardianship Order must be completed detailing why the request is being made. It is then submitted to the State Administrative Tribunal which will arrange a hearing, usually six to eight weeks after the application is lodged.

At the hearing:

- The presiding Member of the State Administrative Tribunal will start by presuming that the person who is the subject of the application has the capacity to make decisions for themselves.
- The person who lodged the application for a Guardianship Order will need to provide evidence to support their application – this can include reports from social and support workers and doctors.
- The Member will assess whether the evidence meets the criteria for a Guardianship Order to be made.
- The Member must consider the views and wishes of the person who is the subject of the application. Where possible they will also decide whether there is another way that the person's needs can be met – such as using family members or care providers to make decisions with the person.

- Once the Member is satisfied they have all the information available they will make their decision.
- If the Member determines a Guardianship Order is needed, they will then decide what type of order is required and what decisions the Guardian is authorised to make.

## If you need help with a Guardianship Order

Ruah Legal Services and MHLC can help you with legal advice and representation if you are the subject of a Guardianship Order application or your Guardianship Order is being reviewed by the State Administrative Tribunal.

If you would like us to represent you at a hearing, we will need at least seven working days' notice. Contact our Telephone Advice Line on **1800 620 285** or visit our website.

## Planning for your future

In Western Australia there are three legal tools which can assist you in planning for how decisions are made on your behalf in the future.

- Enduring Power of Attorney: enables you to appoint someone to make financial and property decisions.
- Enduring Power of Guardianship: enables you to appoint someone to make personal, lifestyle, treatment and medical research decisions.
- Advance Health Directive: enables you to write down your decisions about the specific treatment and health care you would want in certain medical circumstances.

To appoint an enduring guardian or attorney and/or make an Advance Health Directive, you must be capable of making reasoned decisions, able to make a formal agreement and understand the implications of the information contained in that agreement, at the time of completing the forms.

For more information call the Public Advocate telephone advisory service on **1300 858 455** or visit [publicadvocate.wa.gov.au](http://publicadvocate.wa.gov.au).